IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1392/2005
(Anil Bohra & Anr. Vs. The State of Rajasthan)

Date of Order : August 01, 2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Rajeev Purohit for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal miscellaneous petition under Section 482 Cr.P.C. the petitioners have assailed the order dated 6.9.2005 passed by learned Sessions Judge, Rajsamand (for short 'the revisional court' hereinafter) in Criminal Revision No.42/05 whereby the revision petition filed by the petitioners against the order dated 10.8.2005 passed by Chief Judicial Magistrate, Rajsamand (for short 'the trial court' hereinafter) in Criminal Case No.97/05 was partly allowed and while maintaining the order taking cognizance for the offence u/s 39 of the Electricity Act and Section 379 IPC, the order of the trial court directing issuance of non-bailable warrant against the petitioners was converted to bailable warrant. Aggrieved by the

orders impugned, the petitioners have filed the instant petition.

I have heard learned counsel for the petitioners and the public prosecutor. Perused the order impugned of the revisional court as also order dated 10.8.2005 passed by the trial court.

It is contended by the learned counsel for the petitioners that although before the revisional court, the petitioners did not challenge order taking cognizance for the offences noticed above, but since it is legal point, therefore, he submits that while arguing the petition under Section 482 Cr.P.C., he can raise such a point and in this connection, he has relied on the decision of the Hon'ble Supreme Court in Zandu Pharmaceutical Works Ltd. Vs. Mohd. Sharaful Haque and another (2005) 1 SCC 122, wherein the Hon'ble Supreme Court, while considering the scope of power of High Court under Section 482 Cr.P.C., and the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made and a case where there is legal evidence which on appreciation may or may not support the accusations, held that the High Court should not assume the role of trial court and embark upon enquiry as to the reliability of evidence and sustainability of accusation on reasonable apprehension of such evidence. If on consideration of the allegations in the light of the statement made on oath of the

complainant, it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, the proceeding cannot be quashed.

Lastly, it was contended that the trial court without invoking the provisions of Sec. 473 Cr.P.C. took cognizance of the offence which according to learned counsel was barred by the period of limitation.

From the material on record and keeping in view the decision of Hon'ble Supreme Court in Bharat Damodar Kale Vs. State of Andhra Pradesh (2003) 8 SCC 559 it cannot be said that the order taking cognizance is barred by limitation.

It was also contended that after investigation the police filed a negative final report but the trial court took cognizance on the final report.

The contentions raised by the counsel for the petitioners in this regard cannot be accepted and are liable to be rejected in view of the decision of the Hon'ble Supreme Court in Jagdish Vs. State of Rajasthan AIR 2004 SC 1734 wherein the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on

record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

I do not find any merit in the petition. The petition is therefore, dismissed. The stay petition also stands dismissed.

(H.R.PANWAR),J.

Gopal/rp